

HAN (MIGRATION) [2025] ARTA 562 (12 MARCH 2025)

Decision and

Reasons for Decision

Applicant:	Ms Jianan Han
Respondent:	Minister for Immigration and Multicultural Affairs
Tribunal Number:	2115376
Tribunal:	General Member S Durvasula
Place:	Sydney
Date:	12 March 2025
Decision:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 12 March 2025 at 5:12pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 – applicant did not satisfy Public Interest Criteria (PIC) 4020 – birth certificate for her daughter was bogus document – relationship had ceased – sponsor is not the father of the applicant’s child – no compelling reasons that justify exercising the waiver and granting the visa – PIC 4020(1) requirements should be waived – decision under review affirmed

LEGISLATION

Migration Act 1958, ss 5, 65, 359

Migration Regulations 1994, r 1.03, Schedule 2, cl 820.226

CASES

Arora v MIBP [2016] FCAFC 35

Batra v MIAC [2013] FCA 274

Kaur v MIBP [2017] FCAFC 184

Trivedi v MIBP [2014] FCAFC 42

Statement of reasons

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 20 October 2021 to refuse to grant the visa applicant a Partner (Temporary) (Class UK) Subclass 820 visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The visa applicant applied for the visa on 17 June 2015. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 820.226 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because the delegate found the applicant did not meet Public Interest Criterion 4020 (PIC 4020).
3. The applicant appeared before the Tribunal on 7 March 2025 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
4. The applicant was represented in relation to the review.
5. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 820.226 for the grant of the visa.
7. In this case, PIC 4040(1) is relevant. Broadly speaking, this requires there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical Officer of the Commonwealth – a bogus document or information that is false or misleading in a material particular – in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made.
8. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate circumstances justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.
9. ***Non-disclosure certificate***
10. A preliminary issue for the Tribunal is a certificate issued by the Minister under s 376 of the Act. Under s 376 the Tribunal has a discretion to disclose information contained in the subject documents. In this case, the certificate certifies that the disclosure of the information would be contrary to the public interest, because it contains information related to the personal details of another applicant and it would disclose lawful methods for preventing, detecting and investigating breaches or evasions of the law which would prejudice the effectiveness of those methods.
11. There are 2 issues for the Tribunal. The first is whether the certificate is a valid certificate. If the Tribunal decides the certificate is valid, the second issue is the nature of the information and if the information should be disclosed to the applicant.

12. At the hearing, the Tribunal advised the applicant of the existence of the certificate and its preliminary view that the certificate was valid. The Tribunal explained the gist of the information contained in the certificate to the applicant. The Tribunal invited the applicant to comment on the certificate's validity and whether the Tribunal should exercise its discretion to disclose the information. The applicant did not comment on the validity of the certificate, but separately responded to the gist of the information in the certificate (discussed below).
13. The Tribunal is satisfied that the s 376 certificate, which was signed by an authorised delegate of the Minister, is valid. It provides a valid reason for maintaining confidentiality. The Tribunal has exercised its discretion to disclose part of the information covered by the certificate under s 359A of the Act (see below). The Tribunal was satisfied that this information could be disclosed to the applicant without contravening the public interest reasons cited above.
14. The Tribunal has not disclosed the remainder of the information in the certificate. The Tribunal is satisfied it would be contrary to the public interest to do so, as it contains information related to the personal details of another applicant, and it would disclose lawful methods for preventing, detecting and investigating breaches or evasions of the law which would prejudice the effectiveness of those methods.

15. Background and delegate's decision

16. On 17 June 2015, the applicant applied for a Subclass 820/Subclass 801 visa on the basis that she was in a partner relationship with an Australian citizen, Mr David Jusong Ahn (the former sponsor).
17. The parties claim to have met on 16 November 2024. On 23 May 2015, the applicant and the former sponsor married in Australia and a marriage certificate is on file.
18. On 20 May 2017, the applicant gave birth to a daughter in Australia. On 18 January 2018, the applicant provided a copy of her daughter's birth certificate to the Department. The birth certificate lists the applicant as the mother and the former sponsor as the father. The birth was registered on 8 August 2017.
19. On 29 April 2019, the former sponsor wrote to the Department and withdrew his sponsorship of the applicant's visa application.
20. On 12 July 2021, the Department wrote to the applicant inviting her to comment on adverse information. The information was that there was evidence to suggest that the applicant has provided a bogus document to the Department. The relevant document was a birth certificate she had provided, listing the former sponsor as the biological father of her daughter. The Department had received adverse information that the former sponsor was not the biological father of her daughter. This information had been considered in an Australian citizenship application for her daughter and her citizenship had been cancelled under s 37(6) of the *Australian Citizenship Act 2007* (the Citizenship Act) on 11 November 2020.
21. The applicant responded to the Department's procedural fairness letter on 26 July 2021. She claimed that her daughter was the biological child of herself and the former sponsor. At the time of registering her birth, she and the former sponsor were still in a relationship and he believed he was the father of the child. He helped her to obtain Medicare benefits. He stopped providing financial support for the child after the relationship broke down. He now has a new girlfriend. She sent her daughter to China and she is being looked after by her parents. She is unable to arrange a DNA test for the child or provide other evidence that the former sponsor is the father of the child.

22. Departmental movement records show that the applicant's daughter departed Australia on 6 August 2019 and she has not since returned.
23. The delegate found the applicant had provided a bogus document to the Department, being the birth certificate for her daughter. The delegate also found there were no compelling circumstances affecting the interests of Australia or compelling or compassionate circumstances that affect the interests of an Australian citizen, permanent resident or eligible New Zealand citizen, as her daughter was not an Australian citizen. Therefore, the delegate found the applicant did not meet PIC 4020 and did not meet cl 820.226 of the Schedule 2.
24. In the decision record, the delegate referred to the adverse information in paragraph 18 above. In addition, the delegate noted that in cancelling the daughter's Australian citizenship, the delegate for that matter was unable to confirm that the former sponsor was the biological father of her daughter.

25. Evidence provided to the Tribunal

26. After lodging the review application, the applicant provided the following evidence to the Tribunal:
- Initial psychological assessment report from Mr Hamid Reza Dadgostar for an assessment conducted on 6 March 2025.
 - 'Power of attorney' from the former sponsor dated 14 May 2018, stating that he authorises the applicant to apply for a Chinese travel document for their daughter.
27. The applicant has also made a claim of family violence, perpetrated by the former sponsor. In support of this claim, the applicant submitted:
- GP mental health care plan dated 14 June 2019
 - medical certificate dated 1 July 2019
 - statutory declaration by psychologist Jenny Cheung dated 31 July 2019
 - statement setting out her relationship with former sponsor.

28. Tribunal hearing

29. At the hearing, the applicant advised that she currently lives in Sydney by herself. She has no family members in Australia. Her daughter is still in China and lives with her parents. She goes to Melbourne for work once a month.
30. The applicant stated that Mr Ahn (the former sponsor) is the father of her child. He was not present for the birth. He went to Korea as his grandmother was sick. He was on a video call for the birth. He arranged for the registration of her daughter's birth and obtained the birth certificate. She does not know about the registration process and how he arranged that. She believes he submitted a form to the post office. He also went with her to the Centrelink when she applied for Medicare for her daughter. The applicant stated that Mr Ahn prepared all the documents, including the birth certificate but she was the one who gave them to the Department.
31. She did not appeal the cancellation of her daughter's Australian citizenship. She received the notice of intention to cancel and the cancellation decision notice. However, Mr Ahn had said the child was not his, so there was not much she could do. She could not arrange a DNA test as the child was in China. She mentioned this to her former migration agent. She believes her former migration agent did not properly advise her how to appeal the cancellation decision.

32. The applicant acknowledged that she had not taken any steps to get a DNA test for her daughter since her citizenship was cancelled in 2020. Initially, she was unable to arrange a DNA test due to COVID. Since then, she has been back to China a few times to visit her daughter, most recently in March 2025. However, she has not been able to arrange a DNA test as she does not have any contact with Mr Ahn. She only has an email address, but he has not responded to her emails. As her daughter's citizenship has already been cancelled, there does not seem any point in doing the DNA test and she will not provide it out of her own will.
33. Later in the hearing, the applicant stated that her previous agent did not tell her the DNA test could be done later and she may be willing to get one done now. The Tribunal discussed with the applicant that it would not be willing to delay a decision on the review to allow for a DNA test for her daughter, given that it had been more than 4 years since the Department's decision, she had not taken any steps to get a DNA test done to date, and was unable to contact the former sponsor.
34. She separated from her ex-husband in 2019 and they got divorced in July 2019. They did not declare that they had any children in the divorce application and the Court did not make any orders in relation to the child. When asked why she had not declared the child, the applicant stated the child belonged to her, not to her ex-husband. If she said the child was his, then he has to contact her and have contact with the child. She did not want this, so she did not declare the child on the divorce application.
35. At the hearing, the Tribunal put to the applicant particulars of information that the Tribunal considered would be the reason, or part of the reason, for affirming the decision under review under s 359A of the Act. The Tribunal explained why the information was relevant to the review and the consequences of the information being relied on in affirming the decision under review.
36. This information was that the former sponsor had advised the Department in August 2019 that he was single and the applicant's daughter was not his daughter. He had agreed to the child taking on his surname so she could access Medicare benefits. This information may be relevant to affirming the decision under review as it may indicate that the birth certificate of the applicant's child was obtained because of a false statement that the former sponsor was her father. This may indicate a basis for the Tribunal to reasonably suspect that the birth certificate was a bogus document and the applicant had given a bogus document to an officer of the Department. Therefore, the applicant may not meet PIC 4040(1).
37. The applicant responded that she was aware that Mr Ahn had told the Department that he was not the father of her child. She believes he does not like girls. However, they went to Medicare together and arranged to get all the relevant documents together.
38. In relation to the medical and psychological reports, the applicant stated she was not sick and she was not taking any medication or seeing any health professional on a regular basis. She only saw Dr Dadgostar once, the day before the hearing. A friend previously told her she may have some mental health issues but she denied it. After seeing Dr Dadgostar, she is starting to believe that she may have some mental health issues.

39. **Findings**

40. The issues in the present case are:
- whether the applicant has given, or caused to be given a bogus document, or information that is false or misleading in a material particular (PIC 4020(1)) and

- if so, whether the requirements of PIC 4020(1) should be waived.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in a material particular?

41. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.
42. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
43. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.
44. In this case, the Department found the applicant did not meet PIC 4020(1) as she had provided a bogus document to the Department, being her daughter's birth certificate. The Department claims the birth certificate was obtained on the basis of a false or misleading statement as the former sponsor, Mr Ahn, is not the father of the child, as named on the birth certificate.
45. To meet the definition of 'bogus document', there need only be a 'reasonable suspicion' of a document being bogus, not probative evidence. The relevant test is whether the Tribunal reasonably suspects the document is a document that falls within one of the 3 limbs of s 5(1) of the Act, not whether one or more of the 3 limbs is satisfied as a matter of fact.¹ A reasonable suspicion in this context requires objective circumstances (which are not mere surmise or conjecture) upon which the reasonable suspicion of the decision-maker is founded.²
46. In this case, the following objective circumstances lead the Tribunal to find that the birth certificate of the applicant's child was obtained because of a false statement that the former sponsor is the father of the child.
47. Firstly, the Department cancelled the Australian citizenship of the child in November 2020 under s 37(6) of the Citizenship Act, on the basis that she was not the child of an Australian citizen. The applicant did not seek a review of this decision.
48. Secondly, based on the applicant's evidence at the hearing, neither the applicant nor Mr Ahn declared the child as part of their divorce application. The Federal Circuit Court made no orders in relation to the child when the divorce was granted. At the hearing, the applicant agreed she had not declared the child to the Court as the child 'belonged' to her and not the sponsor.

¹*Sun v MIBP* [2015] FCCA 2479 at [45].

²*Sun v MIBP* [2016] FCAFC 52 at [86], citing *George v Rockett* (1990) 170 CLR 104 at 115–16.

49. Thirdly, as put to the applicant under s 359A of the Act, the former sponsor told the Department that he was not the father of the child and had only agreed to the applicant allowing the child to use his surname so she could access Medicare benefits.
50. The Tribunal has considered the applicant's explanation that Mr Ahn is the father of her child. The applicant has not provided sufficient objective evidence to support this claim. She claims that the former sponsor arranged for her daughter's birth to be registered and that they went together to submit the relevant paperwork. This in itself does not demonstrate that Mr Ahn is the father of her child, as it is consistent with his statements that he allowed the child to use his surname so she could claim Medicare benefits. The Tribunal has considered the 'power of attorney' document submitted by the applicant from Mr Ahn but does not accept that this in itself establishes that he is the father of the child, given the other evidence before the Tribunal.
51. At the hearing, the applicant stated that her former migration agent did not properly advise her about how to appeal the citizenship cancellation decision, or that she could obtain DNA evidence to prove that Mr Ahn is the father of her child. She indicated that she may need further time to obtain further evidence and/or a DNA test result. The Tribunal has considered whether it should delay making a decision in this matter to allow the applicant time to obtain a DNA test result or other evidence to demonstrate the paternity of her child.
52. The Tribunal finds it is not reasonable to delay the matter in this case. The applicant was aware of the cancellation of her child's Australian citizenship in November 2020 and did not appeal that decision. The delegate's decision to refuse her a visa was made in October 2021, approximately 4.5 years ago, yet she has not taken any steps to obtain further supporting evidence in the interim period. The Tribunal does not accept that she was entirely reliant on her migration agent. The applicant indicated at the hearing that she was aware of the process and the previous cancellation decision. While the applicant was initially unable to travel to China to obtain a DNA test, she has since visited her child in China, most recently in March 2025. She is not in contact with the former sponsor and it appears unlikely that he would contact her or co-operate to participate in a DNA test. Considering these circumstances, the Tribunal finds it is not reasonable to delay the matter to allow the applicant to obtain a DNA test or other evidence to demonstrate the paternity of the child.
53. The Tribunal has considered the medical evidence provided (referred to in paragraphs 23 and 24). The Tribunal does not consider this information is relevant to the issue of whether or not the Tribunal reasonably suspects that the birth certificate is a bogus document. A document is a bogus document if it is obtained because of a false or misleading statement, whether or not made knowingly. The applicant acknowledged at the hearing that she gave the birth certificate to the Department.
54. Having considered all of the circumstances and the applicant's explanations, the Tribunal reasonably suspects that Mr David Jusong Ahn is not the father of the applicant's child. The Tribunal therefore reasonably suspects that the child's birth certificate, which identifies Mr Ahn as the father, is a bogus document within the meaning of s. 5(1)(c) of the Act, as it was obtained because of a false or misleading statement, whether or not made knowingly.
55. The Tribunal finds there is evidence that the applicant has given, or caused to be given, to the Minister or an officer a 'bogus document', as defined in s.5(1) of the Act. Therefore, the applicant does not meet PIC 4020(1).

Should the requirements of PIC 4020(1) or (2) be waived?

56. The requirements of PIC 4020(1) and (2) may be waived where there are compelling circumstances that affect the interests of Australia, or where there are compassionate or

compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen (as defined in reg 1.03), that justify the granting of the visa. The decision-maker must first be satisfied that there are such circumstances, then must consider whether to exercise the discretion to waive the requirements, having regard to those circumstances: *Kaur v MIBP* [2017] FCAFC 184.

57. The expressions 'compelling circumstances' and 'compassionate or compelling circumstances' are not defined for these purposes. To be compelling, the circumstances must force or drive the decision-maker irresistibly to be satisfied: see *Plaintiff M64/2015 v MIBP* [2015] HCA 50. The ordinary meaning of 'compassionate' relates to feelings of sympathy, sorrow, pity or concern for others.
58. At the hearing, the Tribunal explained the waiver and asked the applicant if there were any such circumstances in her case. The applicant stated she was not sure if there were any compelling or compassionate circumstances. She has no family in Australia. She did not lie and everything she provided was true. She did not provide bogus documents.
59. The Tribunal has considered the applicant's evidence, but does not accept this establishes that there are compelling circumstances that affect the interests of Australia, or compassionate or compelling circumstances that affect the interests of an Australia citizen, permanent resident or eligible New Zealand citizen. The Australian citizenship of the applicant's child was cancelled and the child has been in China for almost 6 years. The applicant has no family in Australia. The Tribunal does not accept that the applicant's denial of the bogus document, any claimed mental health condition or any claimed family violence, amounts to compelling circumstances that affect the interests of Australia, or compassionate or compelling circumstances that affect the interests of an Australia citizen, permanent resident or eligible New Zealand citizen.
60. The Tribunal finds there are no compelling circumstances that affect the interests of Australia, or compassionate or compelling circumstances that affect the interests of an Australia citizen, permanent resident or eligible New Zealand citizen. For these reasons, the Tribunal is not satisfied that the requirements of PIC 4020(1) should be waived.
61. On the basis of the above, the applicant does not satisfy PIC 4020 for the purposes of cl 820.226. The Tribunal must affirm the decision under review.

DECISION

62. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Date of hearing: 7 March 2025

Representative for the Applicant: Mr Rongwu Liu (MARN: 0321108)

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the ART during the review of a reviewable migration decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa; the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa; neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; justify the granting of the visa.
- (5) In this clause:
- information that is *false or misleading in a material particular* means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

63.